

1  
2  
3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 PERRY ASHELMAN,

7 Petitioner,

8 v.

9 SHELTON CORRECTIONS,

10 Respondent.

No. C09-5570 BHS/KLS

ORDER TO AMEND

11  
12 This habeas corpus petition has been referred to United States Magistrate Judge Karen L.  
13 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Perry  
14 Ashelman seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. 1-2.

15 Mr. Ashelman has failed to name the correct Respondent, thereby depriving this Court of  
16 personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). 28 U.S.C. §  
17 2243 requires that writs are to be directed “to the person having custody of the person detained.”  
18 The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate  
19 custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the  
20 person having a day-to-day control over the prisoner. That person is the only one who can  
21 produce ‘the body’ of the petitioner.” *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

22 Therefore, Mr. Ashelman’s custodian for purposes of his habeas corpus petition  
23 challenging the execution of his Washington state sentence, is the warden/superintendent of the  
24 prison where he is currently confined. See, e.g., *Brittingham v. United States*, 982 F.2d 378 (9th  
25 Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). According to his petition, Mr.

26 ORDER TO AMEND - 1

1 Ashelman is currently confined at the Stafford Creeks Correction Center (SCCC) in Aberdeen,  
2 Washington. The warden of SCCC is Patrick R. Glebe.

3 Accordingly, it is **ORDERED**:

4 (1) Mr. Ashelman shall amend his petition to name Patrick R. Glebe as Respondent.  
5 Mr. Ashleman may amend his petition by correcting the first page only and providing the Court  
6 with two copies of the amended first page reflecting the properly named Respondent. Mr.  
7 Ashelman shall provide the court with two copies of the amended first page of his petition **on or**  
8 **before November 13, 2009.**  
9

10 (2) The Court Clerk is directed to send a copy of this Order and a form 28 U.S.C. §  
11 2254 petition to Mr. Ashelman, and to note this matter for the Court's November 13, 2009  
12 calendar.

13 DATED this 26<sup>th</sup> day of October, 2009.

14  
15   
16 Karen L. Strombom  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26